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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,428	08/01/2001	Allan F. Robb	36483/KM0/T67	7727

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EXAMINER

NGUYEN, DINH Q

ART UNIT PAPER NUMBER

3752

*11*

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/856,428

Applicant(s)

ROBB, ALLAN F.

Examiner

Dinh Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1, 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. Claims 3 and 5 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 6, 7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeman (U.S. Patent No. 5,224,796) in view of Moore et al.

Zeman discloses a drip irrigation hose 20 having interior and exterior surfaces 22, a water supply passage (not numbered), one or more outlets 38 connecting to the interior surface, one or more root deterrence strip 36 attached to the exterior surface of the hose at or near the outlets 38 (figure 8). Zeman does not expressly disclose the root deterrent strip is a fabric strip. However, Moore discloses a tube 15 having liquid chemical herbicide in the supply passage, outlets 16 connecting to the interior surfaces of tube 15, cloth or rope-like fabric sleeve 17 attached to the exterior of the tube 15 (figure 2) to be saturated with chemical herbicide (column 3, lines 5-24). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the

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device of Zeman with a fabric or felt root deterrent strip as suggested by Moore. Doing so would provide a way to control root (column 1, lines 12-13).

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeman (U.S. Patent No. 5,224,796) in view of Zeman (U.S. Patent No. 5,141,360).

The '796 patent teaches all the limitations of the claims except for a needle-punched non-woven fabric. However, the '360 patent discloses of tubing formed by using chemical herbicide such as trifluralin incorporated within the polymers that are suitable for use in making of drip irrigation tube (column 11, lines 25-55). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of '796 with a needle-punched non-woven fabric material as suggested by '360. Doing so would provide a way to prevent root growth in drip irrigation tube.

5. Claims 9-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Zeman (U.S. Patent No. 5,224,796) in view of Fischer et al.

Zeman teaches all the limitations of the claims except for a trifluralin or copper hydroxide chemical herbicide. However, Fischer discloses of active herbicide compounds such as copper hydroxide (column 30, lines 54-55), and trifluralin (column 32, line 19). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Zeman with a trifluralin or copper hydroxide chemical herbicide as suggested by Fischer. Doing so would provide a way to control root growth with certain type of chemical herbicide.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeman (U.S. Patent No. 5,224,796) in view of Eckstein.

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Zeman teaches all the limitations of the claims except for a hard hose. Eckstein discloses a hard hose type irrigation tube. Thus, it would have been obvious to one having ordinary skill in the art to configure the device of Zeman as a hard hose type irrigation tube as suggested by Eckstein. Doing so would provide a type of irrigation tube that does not require high water pressure (column 1, lines 22-25).

7. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Frank in view of Zeman (U.S. Patent No. 5,224,796).

De Frank discloses a drip irrigation hose 10 having an interior surface, an outer surface, a water supply passage 24, a plow regulating channels 20, an inlet section with one or more openings 28, an outlet section with one or more openings 30, and a chemical herbicide channel 22 for preventing root intrusion into the irrigation hose. De Frank does not teach one or more root deterrent trip attach to the exterior surface. However, Zeman discloses a drip irrigation hose 20 having interior and exterior surfaces 22, a water supply passage (not numbered), one or more outlets 38 connecting to the interior surface, one or more root deterrence strip 36 attached to the exterior surface of the hose at or near the outlets 38 (figure 8). Therefore, it would have been obvious to one having ordinary skill in the art to have configure the device of De Frank with one or more root deterrent trip attach to the exterior surface as suggested by Zeman. Doing so would provide the irrigation hose with root deterrent herbicide without relying on the chemical herbicide channel 22, thus provide an economical irrigation hose.

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8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over De Frank in view of Zeman (U.S. Patent No. 5,224,796) as applied to claims 14-16 above, and further in view of Fischer et al.

Frank in view of Zeman teaches all the limitations of the claims except for a copper hydroxide chemical herbicide. However, Fischer discloses of active herbicide compounds such as copper hydroxide (column 30, lines 54-55). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of De Frank and Zeman with a copper hydroxide chemical herbicide as suggested by Fischer. Doing so would provide a way to control root growth with certain type of preferred chemical herbicide.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to show the art with respect to an irrigation hose: Babin, and Winston. 3,403,993 to Hoff is cited to disclose a way to introduce root deterrent chemical in sewer lines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q Nguyen whose telephone number is (703) 305-0248. The examiner can normally be reached on Monday-Friday 6:30-4:00 alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

dqn  
May 3, 2003



Dinh Nguyen

Patent Examiner